Neutral Citation Number: [2022] EWHC 2383 (Ch)



Case No: PT 2019 000980

**IN THE HIGH COURT OF JUSTICE**
**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**
**PROPERTY TRUSTS AND PROBATE LIST**

Royal Courts of Justice
The Rolls Building
Fetter Lane
London
EC4A 1NL

Date: 22 September 2022

**Before** :

**HHJ JOHNS KC**
Sitting as a Judge of the High Court

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In the matter of the Inheritance (Provision for Family and Dependants) Act 1975
In the estate of Sharon Marcia Antonio McBean (Deceased)

**Between :**

**RYAN ANTONIO**
**(A minor, by his litigation friend Umar Ali)**

**Claimant**

**- and -**

**(1) JAMAAL GEORGE YUSUF WILLIAMS**
**(2) ENID McBEAN**

**Defendants**

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MISS ZOE GIBBON (instructed by **Ozon solicitors**) for the **Claimant**

MS ANGELA HALL (instructed by **Taylor Rose MW**) for the **First Defendant**

MS SARAH EGAN (instructed by **Shoosmiths LLP**) for the **Second Defendant**

Hearing dates: 30 June & 1 July 2022
Written submissions: 6 July and 13 July 2022

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# APPROVED JUDGMENT

*This judgment is handed down by email to the parties' representatives and release to The National Archives at 2pm on Thursday 22 September 2022*

**HHJ JOHNS KC:**

1. This case concerns the estate of Sharon Marcia Antonio McBean (**Sharon**) who died aged 53 on 11 February 2016. Ryan Antonio (**Ryan**) brings this claim for reasonable financial provision out of Sharon's estate on the basis that he was treated as a child of the family or was being maintained by Sharon. He is now 12 years old. Being a minor, he brings the claim by his litigation friend. That is his father, Umar Ali (**Umar**). He is Sharon's brother. The claim is brought against Jamaal George Yusuf Williams (**Jamaal**). He is Sharon's son and a beneficiary of the estate. Enid McBean (**Enid**) has been joined as the second defendant. She is Ryan's grandmother.

Factual and procedural background

2. I start with the factual background. As much of this was disputed, my account includes some findings of fact.

3. Ryan was born on 2 January 2010. His mother did not look after him; contacting social services when he was born for them to make arrangements for his care. They contacted Umar. Umar did look after Ryan, but only with very considerable help from his sister, Sharon.

4. Indeed, I find that Ryan was maintained by Sharon for the whole of his life until her death.

5. First, Jamaal's own evidence, which I accept, was that Ryan came straight from hospital to 42 Chestnut Rise, the home of Sharon and Enid. And that, with Enid, Sharon took full time care of Ryan; Umar "*merely coming and going on fleeting*

*visits*". He told me further that even once Umar had his flat, Ryan remained in the care, including financially, of Sharon and Enid.

6. Second, this must have been necessary for an extended period anyway near the start of Ryan's life as Umar was imprisoned for 17 months. And Umar's evidence is also to the effect that, both on his release, and on the later expiry of his licence period, Ryan continued to live at 42 Chestnut Rise with Sharon.

7. I find also that Sharon's contribution to Ryan's maintenance extended to the bulk of his everyday needs. That was Umar's evidence (see para.26 of his first witness statement) and fits with the parties' circumstances. Umar was very limited in what he could contribute. That was his own evidence. And was reflected in Jamaal's evidence; Jamaal telling me that since Umar's release from prison he has not had a steady job and is in a significant amount of debt – para.20 of his first witness statement. Further, while Enid will have helped, she too has been dependent on Sharon financially. Jamaal's evidence was that Sharon paid the mortgage on 42 Chestnut Rise from at least 2002. I accept that evidence. Insofar as Umar and Enid said otherwise, they were generally somewhat confused in their evidence (Enid to a greater and Umar to a somewhat lesser extent). Jamaal gave clearer evidence which gave me, generally, more confidence in it. I also accept Jamaal's evidence that Enid was in very significant debt – see para.9 of his third witness statement. That evidence received some support from documents showing earlier substantial mortgage arrears. That Sharon met the bulk of Ryan's everyday needs is further supported by the terms of her will. She refers to "*the start in life I gave him*".

8. Just one day before she died, so on 10 February 2016, Sharon made that will. It included this:

"*The sale of property namely 216 Davidson Road of which 50% share will go to my mother Enid McBean. The other 50% to Jamaal Williams in trust to assist to give the amount of £10,000 to each of my brothers, Latvia McBean and Umar Alia. The amount of £10,000 will go to my sister Barbara Charles. Any remainder should be shared equally between Jamaal Williams and held in trust for the education of Ryan Antonio McBean on the condition that he makes positive decisions for his future, to be determined by my son Jamaal.*

*I give my flat 8a Voce Road to Jamaal to look after in trust for Ryan to live in as he comes of age. A portion of any monies pertaining to the flat to go towards helping him go to University. My intention is to ensure his future is a success and to provide him with the start in life I gave him. Should he not attend university, any constructive career plan as determined by Jamaal Williams will satisfy the terms of the trust. With regards to the care of Ryan Antonio McBean, my wish is for him to be provided with the same consistency and positive influence as I have provided him this far. I wish for my son Jamaal Williams to play an active role in his life, and for him to continue at the same school he attends to avoid any disruption to his progress."*

9. The will also names Ryan as one of three beneficiaries of the residuary estate; the other two being Jamaal and Enid.

10. My assessment is that Sharon did assume responsibility, indeed primary responsibility, for Ryan's maintenance. That was seen in what she in fact did. And in her wishes as expressed in her will. The terms in which Jamaal dealt

with this issue are also instructive. He referred to Sharon as having "*no formal legal responsibilities towards Ryan*" and no "*formal parenting responsibility*" (para.39 of his first witness statement). He expressed himself in that way, in my judgment, because she did, in substance, take on the role of mother to Ryan. She did treat him as her child. That is further reflected in the certificate of dedication in the trial bundle dated 29 April 2012 which referred to Sharon as Ryan's "*adopted mother*". While Umar was questioned about this document, it was not put to him it was forged, and I would not have found it was forged. While I do not accept all that Umar told me – his evidence seemed to me sometimes confused and often vague – I am confident he was not seeking to mislead me in any way. He gave evidence truthfully. And the certificate fits with the other evidence I have already referred to. As does Umar's evidence that Ryan called Sharon "*mum*" which I therefore also accept (despite it not according with Jamaal's evidence on this).

11. As at her death, Sharon was sole registered proprietor of one property, namely 216 Davidson Road, Croydon CR0 6DF. She was also a joint registered proprietor of three further properties.

11.1 8a Voce Road. This had been purchased by Sharon under the right to buy scheme in 2002 and has always been a letting property. Jamaal was added as a joint owner of it in 2010

11.2 113 Moordown, Woolwich, London SE18 3NA. This began life as the property of Sharon's former husband; the father of Jamaal. It became jointly owned by him and Sharon. Later, and as at the time of her death, the joint registered proprietors were Sharon and Jamaal.

11.3 42 Chestnut Rise, Woolwich, London SE18 1RJ. This was the home of Sharon, Enid and Ryan. Sharon was the joint registered proprietor, from 2002 with Enid; Enid having been the sole registered proprietor before then.

12. On Sharon's death, 8a Voce Road and 113 Moordown became wholly owned beneficially by Jamaal. 8a Voce Road remains let out. 113 Moordown is the home of him and his family. Both are subject to mortgages. 42 Chestnut Rise has been wholly owned beneficially, at least since Sharon's death, by Enid. It is also subject to a mortgage. It has been her home, though she has most recently been living at 216 Davidson Road; some works being required to 42 Chestnut Rise.

13. The reading of the will after Sharon's death sparked this regrettable family dispute. The executors renounced. Letters of administration were granted to Mr Williams on 7 August 2018; wrongly, as Sharon had not died intestate.

14. This claim was issued on 27 November 2019. It includes seeking an order that Sharon's severable share in 8a Voce Road be treated as part of her estate. It also asks for an order permitting the claim to be made more than 6 months after the grant of representation.

15. The claim first came before the Court on 6 March 2020. Deputy Master Arkush revoked the grant of letters of administration and required Jamaal to apply for a grant of probate or letters with the will annexed. He also directed that the claim proceed as a claim under CPR Part 7. The claim came back before the Court for directions on 18 January 2021. Deputy Master Nurse ordered amendment of the claim so as to name Enid as the second defendant. That order was made in these circumstances. Part of Jamaal's case is that any provision for Ryan should be

made out of Sharon's severable share in 42 Chestnut Rise. But Umar's evidence included his understanding that "*Sharon managed to transfer the property into joint names without my mother's knowledge ...*" (para.27 of his second witness statement) so that it should not be considered joint property at all. Directions towards trial, including for a witness statement from Enid, were given on 30 August 2021. On 18 February 2022, Roth J made an interim injunction restraining any registered disposition of 42 Chestnut Rise, 113 Moordown, or 8a Voce Road. That order was made on the application of Jamaal and on his undertaking to seek a listing of this claim for trial.

16. The claim was then listed for trial. Shortly before trial, new solicitors for Enid applied for relief against sanctions and for permission to rely on a late witness statement of Enid. That witness statement included this at para.21: "*In around 2009, Sharon ... fraudulently added her name to this property title without my knowledge or approval*". The application was allowed without a hearing by Deputy Master McQuail by order of 24 June 2022.

The trial

17. I heard the trial over two days with closing submissions being made subsequently in writing. That was the course agreed by counsel after I had dealt with a number of matters on the first day of those two days of trial.

18. One was an oral application by counsel for Jamaal to set aside the order permitting Enid's late witness statement. I dismissed that application, as well as granting permission for Jamaal to rely on his own further witness statement dated 27 June 2022, for reasons I gave at the time.

19. That decision was followed by two applications to adjourn the trial. One by Jamaal. That was made on the basis of having to adjust to what was said to be a new case made by Enid's late witness statement. And one by Umar. The reason relied on for Umar was that his counsel had not received a copy before the trial of the recently compiled supplemental trial bundle.

20. I refused both applications to adjourn and, owing to pressure of time, indicated that I would give my reasons for doing so when delivering judgment on the claim.

21. My reasons for refusing Jamaal's application to adjourn are these.

22. First, the circumstances were such that an adjournment really was to be avoided as long as the trial could proceed fairly. This was a long-running family dispute; proceedings having been commenced in 2019 and Sharon having died as long ago as 2016. It should not be prolonged further. Particularly as one of the participants, Enid, is 91 years old. Nor further expense added to it; the claim being a modest one in respect of an estate in which, at least without an order being made in respect of jointly owned property, there was no value. Further, it ought not to take up the valuable court resources represented by another two days for a relisted trial.

23. Second, the trial could, in my judgment, proceed fairly. The allegation of fraud in relation to 42 Chestnut Rise being made in the late evidence of Enid had long been a feature of the case. It had been there since at least the second witness statement of Umar (see para. 15 above) and there was correspondence on it in which Jamaal's case was set out. While there had been no statements of case or disclosure on the issue, that was not because the issue was raised late. It was

simply that, while a direction had been made for the case to proceed under CPR Part 7, advantage had not been taken of the usual benefits of that course. There had been no directions at all for statements of case and disclosure. The issue was also one on which Jamaal had put in a very full witness statement, namely his statement of 27 June 2022 which I gave permission for. And on which the documents sought to be relied on by Jamaal to answer the allegation were already in evidence. One further point as to fairness is that Umar and Enid also had to deal with late evidence; the estate accounts only being produced by Jamaal very shortly before trial.

24. As the trial progressed, it became clear to me I had taken the right course in not acceding to the request for an adjournment. While this dispute continues, it is indeed causing great upset. That was seen most sharply in Enid's evidence that she found this litigation very distressing and just wanted to get on with life. Further, it was apparent that Jamaal's team was well prepared to answer the allegation of fraud in relation to 42 Chestnut Rise. Overall, justice was best done by proceeding with a trial that was, perhaps, imperfectly set up than by setting off on new directions to a new trial.

25. As to Umar's application to adjourn, there seemed to me no unfairness in refusing this either. My reasons for reaching that conclusion and accordingly, given the undesirability of an adjournment, refusing Umar's application were these. The issue appeared to be one internal to Umar's team in that the bundle had gone to his solicitors but not then on to counsel. In any event, the supplemental bundle contained almost exclusively documents which were already in the case. This was not new disclosure. Further, I was able to take

measures to avoid any apparent impact on the presentation of Umar's case by reason of counsel having sight of the supplemental bundle so late. I rose at around noon so as to give Umar's counsel two hours with the bundle before the start of evidence, and timetabled the evidence so that only Umar gave evidence on the first afternoon. That meant his counsel was able to have until 10 am the next morning with the supplemental bundle before she had to conduct any cross-examination.

26. A further matter was a concern I raised that there had never, since the revocation of letters of administration by order of 6 March 2020, been either a grant of representation or any order for representation of the estate in the proceedings. Jamaal had in practice been taking that role in the proceedings, but without any order. I therefore made an order that Jamaal represent the estate of Sharon in these proceedings pending a grant of representation. I made that order without objection from any party pursuant to CPR 57.6(3A) & (3B). In addition, I invited submissions on whether I could make an order for reasonable financial provision under the Act in the absence of a grant. I address that topic at the end of this judgment.

27. Finally, the parties made clear, on enquiry being made by me, that they were proceeding on the basis that there was no need for any permission for the claim to be brought out of time in circumstances where the earlier grant of representation had been revoked.

28. Once the trial proper was underway, I heard evidence from:

28.1 Umar and Enid. As I have already indicated, there was confusion in the evidence given by each of them. It was also plain that Enid was unable to remember much about the events that were put to her.

28.2 Melissa Clarke. She is a member of the wider family; her husband being a cousin of Jamaal and a nephew of Umar. She gave evidence of the falling out between Umar and Jamaal; saying that Jamaal and Umar's relationship was good before this dispute and that Umar was "*upset because for once they were having to step up to look after Enid and Ryan*" (para.7 of her witness statement). She described Enid as having a history of getting into debt.

28.3 Alexi Mae-Reeves. She was a partner or girlfriend of Jamaal and one of the executors named in the will. She recalled the family meeting at which the will was read and the falling out which occurred at that time. The stress caused to her by the dispute led to her renouncing her role as executor.

28.4 Samantha Southwell. She was a friend of Sharon and the other executor named in the will. She too recalled the family meeting at which the will was read and the upset at that meeting. She also renounced her role as executor so as to avoid the stress of the situation. She told me she believes Sharon would have wanted to provide for Ryan but not to the detriment of Jamaal or Enid.

28.5 Jamaal. Like Umar, he seemed to me a truthful witness. But a little more reliable generally; his evidence being less confused.

The legal framework

29. Before turning to decide the claim, I should set out the relevant legal framework.

30. The Inheritance (Provision for Family and Dependants) Act 1975, section 1 sets out the conditions for eligibility to make a claim. This claim relies on section 1(1)(d) which provides for claims by "*any person (not being a child of the deceased) who in relation to any marriage or civil partnership to which the deceased was at any time a party, or otherwise in relation to any family in which the deceased at any time stood in the role of a parent, was treated by the deceased as a child of the family*". And s.1(1)(e) which provides for claims by "*any person (not being a person included in the foregoing paragraphs of this subsection) who immediately before the death of the deceased was being maintained, either wholly or partly, by the deceased*".

31. The ground for an application is, by s.2 of the Act, that the will or intestacy has failed to make reasonable financial provision for the claimant. That is not accepted here. It is common ground that, in the event, Sharon's will makes no provision for Ryan. But that involves, it is argued for Jamaal, no failure to make reasonable financial provision.

32. For claimants in the categories relied on by Ryan, reasonable financial provision "*means such financial provision as it would be reasonable in all the circumstances of the case for the applicant to receive for his maintenance*." – see s.1(2)(b) of the Act. As made clear by the Supreme Court in the leading case of *Ilott v The Blue Cross* [2017] UKSC 17, that is not subsistence. But it cannot extend to any or everything which it would be desirable for the claimant to have. It is concerned with the everyday expenses of living.

33. At least where eligibility to make a claim is not in issue, there are two key questions for the court in cases under the Act: (1) has there been a failure to

make reasonable financial provision and, if so, (2) what order ought to be made? – see *Miles v Shearer* [2021] EWHC 1000 (Ch) at para.76. The questions are overlapping ones in that the factors to which the court is to have regard in answering each question are the same; being those set out in s.3 of the Act. The factors listed in s.3(1) are as follows:

*"(a) the financial resources and financial needs which the applicant has or is likely to have in the foreseeable future;*

*(b) the financial resources and financial needs which any other applicant for an order under section 2 of this Act has or is likely to have in the foreseeable future;*

*(c) the financial resources and financial needs which any beneficiary of the estate of the deceased has or is likely to have in the foreseeable future;*

*(d) any obligations and responsibilities which the deceased had towards any applicant for an order under the said section 2 or towards any beneficiary of the estate of the deceased;*

*(e) the size and nature of the net estate of the deceased;*

*(f) any physical or mental disability of any applicant for an order under the said section 2 or any beneficiary of the estate of the deceased;*

*(g) any other matter, including the conduct of the applicant or any other person, which in the circumstances of the case the court may consider relevant".*

34. The factors in subsections (3) and (4) may also be of relevance in this case:

*"(3) Without prejudice to the generality of paragraph (g) of subsection (1) above, where an application for an order under section 2 of this Act is made by virtue of section 1(1)(c) or 1(1)(d) of this Act, the court shall, in addition to the matters specifically mentioned in paragraphs (a) to (f) of that subsection, have regard to the manner in which the applicant was being or in which he might expect to be educated or trained, and where the application is made by virtue of section 1(1)(d) the court shall also have regard—*

*(a) to whether the deceased maintained the applicant and, if so, to the length of time for which and basis on which the deceased did so, and to the extent of the contribution made by way of maintenance;*

*(aa) to whether and, if so, to what extent the deceased assumed responsibility for the maintenance of the applicant;*

*(b) to whether in maintaining or assuming responsibility for maintaining the applicant the deceased did so knowing that the applicant was not his own child;*

*(c) to the liability of any other person to maintain the applicant.*

*(4) Without prejudice to the generality of paragraph (g) of subsection (1) above, where an application for an order under section 2 of this Act is made by virtue of section 1(1)(e) of this Act, the court shall, in addition to the matters specifically mentioned in paragraphs (a) to (f) of that subsection, have regard—*

*(a) to the length of time for which and basis on which the deceased maintained the applicant, and to the extent of the contribution made by way of maintenance;*

*(b) to whether and, if so, to what extent the deceased assumed responsibility for the maintenance of the applicant."*

35. Overall, "*the Act plainly requires a broad brush approach from the judge to very variable personal and family circumstances*." (*Ilott* at para.24).

36. As to the size and nature of the estate, a feature of the Act of central importance in this case is the power in s.9(1) to treat the deceased's severable share of jointly owned property as part of the net estate.

*"(1) Where a deceased person was immediately before his death beneficially entitled to a joint tenancy of any property, then, if an application is made for an order under section 2 of this Act, the court for the purpose of facilitating the making of financial provision for the applicant under this Act may order that the deceased's severable share of that property shall, to such extent as appears to the court to be just in all the circumstances of the case, be treated for the purposes of this Act as part of the net estate of the deceased."*

Decision

Eligibility

37. It was accepted by Ms Hall for Jamaal that Ryan was eligible to make a claim under the Act. That acceptance was on the basis that Ryan was a person being maintained by Sharon within s.1(1)(e). I note that involves an acceptance that there was maintenance right up to the time of death of Sharon. It was not accepted, however, that he was treated as a child of the family by Sharon.

38. It was not suggested by anyone in this case that a different level of provision could be expected, or should be ordered, depending only on which of the two categories of eligibility was appropriate. But in case it is of relevance I make it clear that I am satisfied on the evidence that Ryan is also able to make claim by virtue of s.1(1)(d). As I have already found, Sharon did, in substance, take on the role of mother to Ryan. She did treat him as her child.

A failure to make reasonable financial provision?

39. I turn from eligibility to ask the first of the two key questions: has there been a failure to make reasonable financial provision for Ryan?

40. In the event, the will makes no provision at all for Ryan. While it purports to do so out of 216 Davidson Road and 8a Voce Road, neither property (at least without an order under s.9(1) in respect of 8a Voce Road) forms part of Sharon's estate. And there is, according to the estate accounts recently produced, no residuary estate at all in which Ryan might otherwise share. That Ryan receives nothing does, in my judgment, represent a failure to make reasonable financial provision for him. The following factors point, in my judgment, towards that conclusion.

41. First, Ryan was in fact maintained by Sharon for the whole of his life until her death. It was she who met the bulk of his everyday needs. That was part of her assuming responsibility for his maintenance; even treating him as her child.

42. Second, Ryan is still an infant child. He has no income or resources of his own. That can be expected to remain the case until after higher or further education.

43. Third, it is true he does not currently have a housing need, as he lives with his father, Umar, in Umar's rented housing association flat; Flat 5, Lyme Grove House, Loddiges Road, Hackney, London E9 6FF. However, Umar is unlikely to be able to provide all that is required for Ryan's maintenance in the period up to the end of any higher or further education. As to that:

43.1 One, Umar has not done that so far. That is plain from the fact of Sharon's maintenance of Ryan.

43.2 Two, while Umar prepared a schedule of sums spent on Ryan which was used by Ms Hall as the basis for a submission that Ryan's needs could be met by Umar, the schedule is not in my judgment a good guide to what is reasonable financial provision. It represents instead what Umar has been able to do given his limited financial circumstances and without the contribution Ryan was used to receiving from Sharon. That includes expenditure of £550 a year on clothes and footwear. £260 a year on haircuts. £220 in total for Christmas and birthdays. And around £2000 a year in total for Ryan's sports clubs. As Umar put it in his first witness statement (at para.33), "*Ryan is worse off because he no longer benefits from that financial assistance that my sister was in the habit of providing during his lifetime.*" The schedule includes nothing for things such as eating out, entertainment, books, holidays or school trips; items which should be considered everyday expenses of living. Nor does it take account of the very significant expenses which could be expected in the event – hoped for by Sharon – that he goes on to higher or further education.

43.3 Three, Umar has, and is likely to continue to have, only very limited income. At the time of his first witness statement, being November 2019, Umar

was in debt and dependent on benefits and help from Enid. By the time of his second witness statement, being February 2021, he had obtained work as a delivery driver and was earning around £12,000 a year. Sadly, by the time of his third witness statement, being May 2022, he had lost that work owing to lower back pain. He is now 61, not in paid work, and caring for Enid; receiving a carers allowance of £69.70 per week. He told me he also receives child benefit and housing benefit.

44. Fourth, at least if regard is had to the power in s.9(1) of the Act, the net estate of Sharon is sufficient for a substantial payment to be made for Ryan's maintenance. In that regard, the market appraisals of the possibly relevant properties as at January 2021, when averaged from the assessments of three estate agents and rounded down a little, and the mortgages to which they are subject are as follows:

| | |
|---|---|
| 42 Chestnut Rise | Appraisal £395,000. Mortgage £157,938. |
| 8a Voce Road | Appraisal £245,000. Mortgage £71,935.88. |
| 113 Moordown | Appraisal £365,000. Mortgage £175,675.42. |

45. Fifth, Sharon's testamentary wish as expressed in the will was that very significant provision be made for Ryan from her assets. She wanted to provide for his education out of the proceeds of 216 Davidson Road and, as to university, out of income from 8a Voce Road. And for him then to have that property to live in. That is in addition to any payment to him out of the residue.

46. I do not ignore the resources of Enid. The office copy entry for 216 Davidson Road records that the stated value of that property as at 29 June 2020 was

£370,000. It appears from an email of 22 June 2022 from her co-owner, a Mr Gary Day, that he has invested around £200,000 in the property. While Jamaal pointed to higher Zoopla figures for the value, I do not consider those sufficiently reliable for a specific property to depart from the stated value. She also has, subject to any order under s.9(1) of the Act, significant equity in 42 Chestnut Rise in the order of £235,000. But she does not intend to use that combined equity to provide for Ryan. Nor does she have any obligation to do so. She is concerned with her own housing needs. She wants to return to 42 Chestnut Rise as her home. And the equity she has, on the evidence, in 216 Davidson Road, is just sufficient to pay off the mortgage on 42 Chestnut Rise; a mortgage she is, on the evidence, unable to service from her pension without help from her family.

What order ought to be made?

47. I turn then to the second of the questions: what order ought to be made?

48. The first thing that should be done in answering that question is to determine whether, as Jamaal says, Sharon had a severable share in 42 Chestnut Rise, or whether, as Enid says, Sharon had no such share because "*In around 2009, Sharon ... fraudulently added her name to this property title without my knowledge or approval.*" (para.21 of her witness statement).

49. I have reached the clear conclusion that there was no such fraud. The contemporaneous correspondence with solicitors and lenders shows very clearly that, as at the end of 2001, Enid – then sole registered proprietor of 42 Chestnut Rise – was in substantial mortgage arrears of over £5000. That those were repaid by a remortgage obtained jointly in 2002 with Sharon; a transfer of 42 Chestnut

Rise being made into joint names at that time, so back in 2002. That Enid had solicitors acting for her on the transaction. And that surplus proceeds raised by the remortgage were paid to Enid. She also accepted in her cross examination that it was indeed her signature on those documents which appeared to bear her signature. Enid had no explanation for these documents and the correspondence when they were put to her in cross examination. They are entirely inconsistent with the suggested fraud in 2009 and mean that the assertion of fraud has no substance.

50. On the closing submissions for Jamaal, if Sharon's severable half share of 8a Voce Road was treated as part of her net estate, a sum of at least £50,000 could be available to distribute to Ryan.

51. Given his age of 12, and the significant period of time still to run before Ryan will have completed any higher or further education, I consider in the circumstances which I have already set out when considering the first of the two key questions, and applying the legal framework I have outlined, that a sum of £50,000 would represent reasonable financial provision for him. He has a long time to go before he should be expected to be earning and a substantial sum of that order is reasonably required to ensure he is maintained until that time given the limited means of his father.

52. It might even be thought to be a conservative figure. But I consider it would be wrong to settle on a greater sum given the relative paucity of detailed evidence as to Ryan's needs. Further, there is not a great deal more to be obtained from Sharon's severable share of 8a Voce Road in any event. And it is from that source that, in my judgment, the sum for Ryan should come.

53. I consider that the making of this reasonable financial provision for Ryan should be facilitated by treating 8a Voce Road, rather than 42 Chestnut Rise, as part of Sharon's net estate.

54. First, 8a Voce Road is a let property, apparently producing no net income. It is no one's home. And gives no one any income.

55. Second, a sale of 8a Voce Road would leave Jamaal with the benefit of 113 Moordown, which is his home, out of Sharon's former assets. And it would leave Enid with the benefit of 42 Chestnut Rise, which has been Enid's home and which she wishes to return to, out of Sharon's former assets.

56. Third, like 113 Moordown, 42 Chestnut Rise was not earmarked by Sharon in her will as a source of any provision for Ryan. 8a Voce Road was. An order to provide for Ryan out of 8a Voce Road gives some effect to those testamentary wishes.

57. Fourth, the rightness of such an order received significant acknowledgment in Jamaal's oral evidence. Jamaal accepted in cross examination that Ryan should have an interest in 8a Voce Road. And seemed to suggest that he would give Jamaal such an interest. He also seemed to row back from the idea that the proper course was to make provision for Ryan out of 42 Chestnut Rise, rather than 8a Voce Road. When he was asked if he was saying that 42 Chestnut Rise should be used to meet Ryan's needs, he responded that he was saying it could be.

58. Three further points before I move to consider the issue of making an order for reasonable financial provision in the absence of a grant of representation.

59. It was argued for Jamaal that the claim should fail for lack of evidence. It is true that the evidence in this case did not contain the level of detail often seen in claims under the Act. But there was enough evidence for me to reach the conclusions I have, particularly where Ryan is at a relatively early stage of life. There cannot be, at that stage, any great detail of what life will look like through the later teens and precisely what needs there will be. And, as was said in *Ilott*, the Act in any event calls for a broad brush approach. Further, the exercise under the Act is not a purely mathematical one. As I have already indicated, the lack of detailed evidence has, though, meant I have felt unable to award any larger figure.

60. I should make clear that I would have made the same order even had I not been satisfied that Ryan was also eligible as having been treated as a child of the family. While that would have meant s.3(3) of the Act was not engaged, I have sought in any event to take account of all the circumstances as required by s.1(1)(g).

61. The final point is this. Of those circumstances, counsel for Umar pointed to two matters of conduct. That the will was read at the family meeting only a few months after Sharon's funeral. And that Jamaal referred in his evidence to 216 Davidson Road as part of her estate even after the mediation. Neither matter, in my judgment, requires greater provision to be made for Ryan. The conduct is not conduct of either the claimant, Ryan, or the deceased, Sharon. Further, there is little in either point. The meeting for the reading of the will was held by the then executors, not Jamaal. That was the unchallenged evidence of Samantha Southwell. And there is, anyway, no requirement for any such meeting. The fact

of the mediation was not hidden. It was referred to in Jamaal's first witness statement (at para.25).

Absence of a grant

62. A note in the current *White Book* at 57.16.6 indicates that there must be a grant of representation in place for an order for reasonable financial provision to be made under the Act.

"*On the hearing of a claim under the Act the personal representatives must produce the original grant of representation to the deceased's estate. If the court makes an order under the Act, the original grant together with a sealed copy of the order must be sent to the Principal Registry of the Family Division, First Avenue House, 42–49 High Holborn, London WC1V 6NP for a memorandum of the order to be endorsed on or permanently annexed to the grant. These requirements indicate that whilst a claim under the Act may be begun pre-grant, there needs to be a grant of representation in place before an order under the Act is made*."

63. But there is no clear prohibition in the Act on the making of an order before a grant of representation. Nor is such a prohibition in my judgment to be inferred from its other terms. While the Act does include a requirement for orders under the Act to be sent to the Principal Registry for a memorandum of them to be endorsed on the grant, that is a requirement for "*every order*" – see s.19(3) of the Act. It therefore extends to interim orders. The power to make interim orders, given by s.5 of the Act, surely cannot depend on a grant. Such orders are needed where applicants need immediate assistance, and a claim may be brought before any grant; s.4 of the Act (as amended by the Inheritance and

Trustees' Powers Act 2014) making clear that "*nothing prevents the making of an application before … representation is taken out*". That requirement should not therefore be regarded as inconsistent with the ability to make an order before there is a grant. The other requirement referred to in the note is a requirement of the Practice Direction to Part 57. It is not a feature of the Act at all. It can anyway be read as a requirement only to produce *any* grant of representation.

64. For those reasons, I agree with the submissions of all the parties in these proceedings. Those were to the effect that the Court is able to make an order for reasonable financial provision under the Act even where there is, as yet, no grant of representation.

65. It follows from all I have set out above, that I will make such an order in this case in favour of Ryan in the sum of £50,000; ordering further that Sharon's severable share in 8a Voce Road be treated as part of her net estate to facilitate that provision.